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8 Attorneys for Plaintiff
9 MOTOR WORKS, LLC

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(San Jose Division)

MOTOR WORKS LLC,) Case No: 08-cv-03608-RS
Plaintiffs,)
v.) DECLARATION OF JOHN MURRAY IN
SAFER TECHNOLOGIES, INC., CERMA) SUPPORT OF PLAINTIFF MOTOR WORKS
TECHNOLOGY, INC., GEORGE) LLC'S OPPOSITION TO MOTION FOR
ACKERMAN, MARY STRANAHAN,) SUMMARY JUDGMENT
NICHOLAS STREIT, TIM STREIT and)
EDWARD HALBACH)
Defendants)

I, John Murray, hereby declare, as follows:

1. I am over the age of 18 years and have personal knowledge of the matters set forth
herein.
2. The CERMAX mark was licensed by MOTOR WORKS LLC to Cerma Technology, Inc.,
as reflected in the label I approved for Cerma Technology, Inc.'s use a true and correct
copy of a draft of which was attached to the Trademark application filed by Safer
Technologies, Inc. as Ser. No. 77471782. A true and correct copy of the specimen
submitted therewith is attached as Exhibit 1.

- 1 3. The CERMAX mark is a word mark that I devised and approved as reflected in my email
2 to Mr. Streit dated October 31, 2006, a true and correct copy of which is attached hereto
3 as Exhibit 2.
- 4 4. Over the course of Cerma Technology, Inc. being a licensed distributor of Motor Works
5 LLC's product, I retained and exercised exclusive control over all advertising materials
6 bearing the CERMAX mark in order to police it on behalf of Motor Works LLC. A true
7 and correct copy of an email reflecting that authority and Cerma Technology, Inc.'s
8 acknowledgment of that policing authority is attached hereto as Exhibit 3.
- 9 5. Defendant Cerma Technology, Inc. was terminated as an authorized distributor of Motor
10 Works LLC product, which rights to distribute and use of the marks in suit were
11 terminated in April 2008 (a month prior to the fraudulent application for trademark filed
12 by defendant Safer Technologies) as reflected in my email to them dated April 18, 2008.
- 13 6. After this lawsuit was filed (and defendants admit no longer obtaining or being
14 authorized to distribute product from Motor Works LLC), defendants have continued
15 through at least mid-October 2008 to identify Motor Work LLC as its source of supply
16 through unauthorized use of plaintiff's UPC code on defendant's knock off product. A true
17 and correct photograph of a bottle of product purchased by me and being distributed by
18 Cerma Technology, Inc. as of October 15, 2008 is attached hereto as Exhibit 4. Although
19 partially obscured the Licensed by Motor Works LLC legend remains visible. More
20 significantly, the label bears one of the UPC codes under exclusive license to Motor
21 Works LLC and identifying Motor Works LLC as the products source.
- 22 7. In connection with this litigation, Motor Works LLC has requested various documents
23 within the exclusive control of defendants and which may be necessary to the proof by
24 “clear and convincing” evidence of defendant's fraud on the United States Patent and
25 Trademark Office, which documents include my email records during the time of the
26 Motor Works LLC–Cerma Technology, Inc. relationship as the email address I was using
27 at that time was and is controlled by Cerma Technology, Inc. and my ability to access
28 those records cut off by the defendants herein. Based upon my current recollection these

1 records will demonstrate that material misrepresentations were made in the trademark
2 application filed by Safer Technologies, Inc. in order to obtain the CERMAX mark,
3 including but not limited to the date of first use and identify of the entity first using the
4 mark in commerce.

5 8. Motor Works LCC's failure to timely respond to discovery herein was due to an
6 inadvertent calendaring error and failures of my health which have been severe and
7 ongoing over the last 4-5 months.

8 I declare the foregoing to be true and correct under penalty of perjury under the laws of the
9 United States of America. Executed this 14th day of September 2009, at Grayson County, Texas.

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11 /s/
12 John Murray

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0Z. LABELS - 12.31.06

CODES ARE FOR POSITION ONLY!

Handwritten notes:
 CerMax for Gasoline Engines utilizes ceramic technology to form a micro-ceramic seal on all metal parts within your engine. This will not allow the formation of performance degrading sludge and abrasive carbons. CerMax for Gasoline Engines will restore lost power to your 4, 6 and 8 cylinder gas engine, while giving you protection unmatched by any other oil or oil additive sold anywhere.

Handwritten notes:
 Third party testing has shown the use of CerMax for 2 Cycle Engines can reduce emissions by as much as 92%, friction by as much as 80%, harmonics by as much as 98%, all within minutes of adding CerMax to your engine.

QUESTIONS & TECHNICAL SERVICE
 Contact your local dealer direct or call 866.94.CERMA. Your satisfaction is our #1 concern!

More information available at:
www.CermaTechnology.com

NOTE:

1. Removed "All Cerma products are environmentally safe, and Do Not contain any solvents or PTFE's" for room

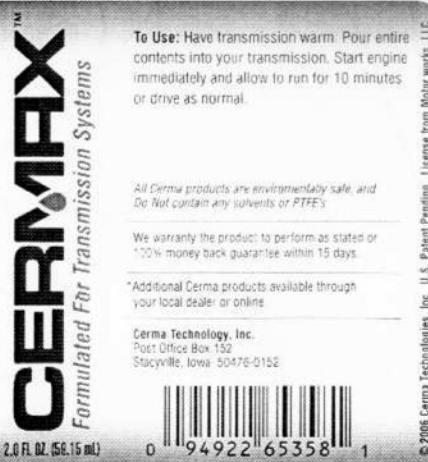
Handwritten notes:
 CerMax for Transmissions utilizes ceramic technology to form a micro-ceramic protective coating on all metal parts within your transmission. This will not allow the formation of performance degrading sludge and varnish to form. CerMax for Transmissions will restore fast smooth shifting, while giving you protection unmatched by any other products sold anywhere.

Handwritten notes:
 Car or pickup '3
 2/2000

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QUESTION:
 1. No third party testing?
 2. No "MD" recommended?



Handwritten notes:
 CerMax for 2 Cycle Gasoline Engines utilizes ceramic technology to form a micro-ceramic seal on all metal parts within your engine. This will not allow the formation of performance degrading sludge and abrasive carbons. CerMax for 2 Cycle Gasoline Engines will restore lost power to your 2 cycle gas engine, while giving you protection unmatched by any other oil or oil additive sold anywhere.

Handwritten notes:
 Third party testing has shown the use of CerMax for 2 Cycle Engines can reduce emissions by as much as 92%, friction by as much as 80%, harmonics by as much as 98%, all within minutes of adding CerMax to your engine.

QUESTIONS & TECHNICAL SERVICE
 Contact your local dealer direct or call 866.94.CERMA. Your satisfaction is our #1 concern!

More information available at:
www.CermaTechnology.com

Handwritten notes:
 Cermax MD was designed to be used as a Maintenance Dose to be used after the initial treatment of the engine with Cermax.

Handwritten notes:
 CerMax MD for Diesel Engines utilizes ceramic technology to form a micro-ceramic seal on all metal parts within your engine.

Handwritten notes:
 Third party testing has shown the use of CerMax Maintenance Dose within your engine can reduce fuel consumption, and maintain smooth running performance.

QUESTIONS & TECHNICAL SERVICE
 Contact your local dealer direct or call 866.94.CERMA. Your satisfaction is our #1 concern!

More information available at:
www.CermaTechnology.com



EXHIBIT 1

Subject: Re: cerma ???

From: John Murray <jaaron@cermatechnology.com>

Date: Tue, 31 Oct 2006 06:13:59 -0600

To: Nick Streit <njstreit@gmail.com>

Nick,

On this matter. I think that the name should be (Cermax) or (Stm-3) both although used prior in different areas of commerce have not been used in commercial marketing relating to Lubrication or Automotive treatments, thus allowing us to utilize the marks in our industry without any problems, in fact we should lay Claim to both at this point.

Claim has already been made for STM-3 just by it use in my labels sold at retail level 5 years ago. to make claim on "Cermax" we only need use the name in our printed material. Then proceed to registration at USPTO for the R within the mark

Nick, I will be on the road for the next 15 days, so after Tuesday contact will have to be via phone

After thought ; (Ceramax) ?

I think STM-3 is less likely to cause confusion when searching, And it is the original name for the product We have used it in commerce for the last 5 years, both in printed material and labels. STM (Surface Tension Modifier) ver# 3

Thank,s John Murray

Nick Streit wrote:

John,

As you may be aware, we have had some questions raised as to whether we would have a problem with CemaLube or just Cerma for a product name. We talked to our lawyer, who in turn recommended the number 1 rated trademark lawyer in the state of Iowa. When we contacted that lawyer, he informed us that if we continued with the name Cerma or Cerma Lubrication in the product name we would "be invited to a party we would not wish not to attend". He advised us that while the corporation name, Cerma Technology, Inc. is fine, we need to find a completely different product name.

We asked him about "Cerama", he did say it was different enough, but a Trademark search showed us it was already taken.

We looked into STM-3, both with & without a hyphen, both have too many hits in searching to be without risk.

At this point in time, LiquiCerm is coming up clean in google searches & Trademark searches.

Please reply with your thoughts.

Nick

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EXHIBIT 2

Subject: John Murray - Advertising Campaign Approval

From: "Tom Taggart" <motionatrest@gmail.com>

Date: Tue, 12 Jun 2007 20:43:41 -0500

To: jaaron@cermatechnology.com, "Nick Streit" <nstreich@cermatechnology.com>

Howdy John,

I was just informed by Nick that you need to be informed and to approve on any advertising. This, tonight, was the **first** I knew of this... otherwise I would have kept you informed from the beginning.

My plan is to fly an aerial banner (attachment one) over all NASCAR and INDY events, week after week, year after year. This website, sends the potential customer to a Gateway Page website, which allows them to Opt-In and go to the Cerma Technology website, with my ID Number automatically plugged in, for their Cermax Orders.

When they order, then their Cermax will be sent out with my Bumper Sticker (attachment two), and a CTI brochure with my "back panel" on it (attachment three).

John, this Advertising Campaign should expose our product to over 4.5 million race car fans yearly. At an only one percent response rate, this should equate to an estimated minimum of 180,000 ounces in sales per year; plus the 'residual' from the bumper stickers and 'word-of-mouth' overflow.

Please let me know SOONEST what your decision on this is, since this advert is due to be exposed to over 145,000 race car fans on Sunday the 17th, and BTW, I have just short of \$10,000 invested in this as of today. Other than my own personal vehicle, this is THE largest investment I have ever made in my 56 years on the planet! ... Let us pray...

I hope you approve.

THANKS, and I look forward to seeing you Sunday the 17th in Dallas at your Tradeshow!

God bless,
Tom T :>

Please include all previous messages when replying to this message.



Ceramic Lube Banner FINAL.pdf

Bumper Sticker FINAL.JPG

EXHIBIT 3

Brochure - BACK.doc

REDACTED

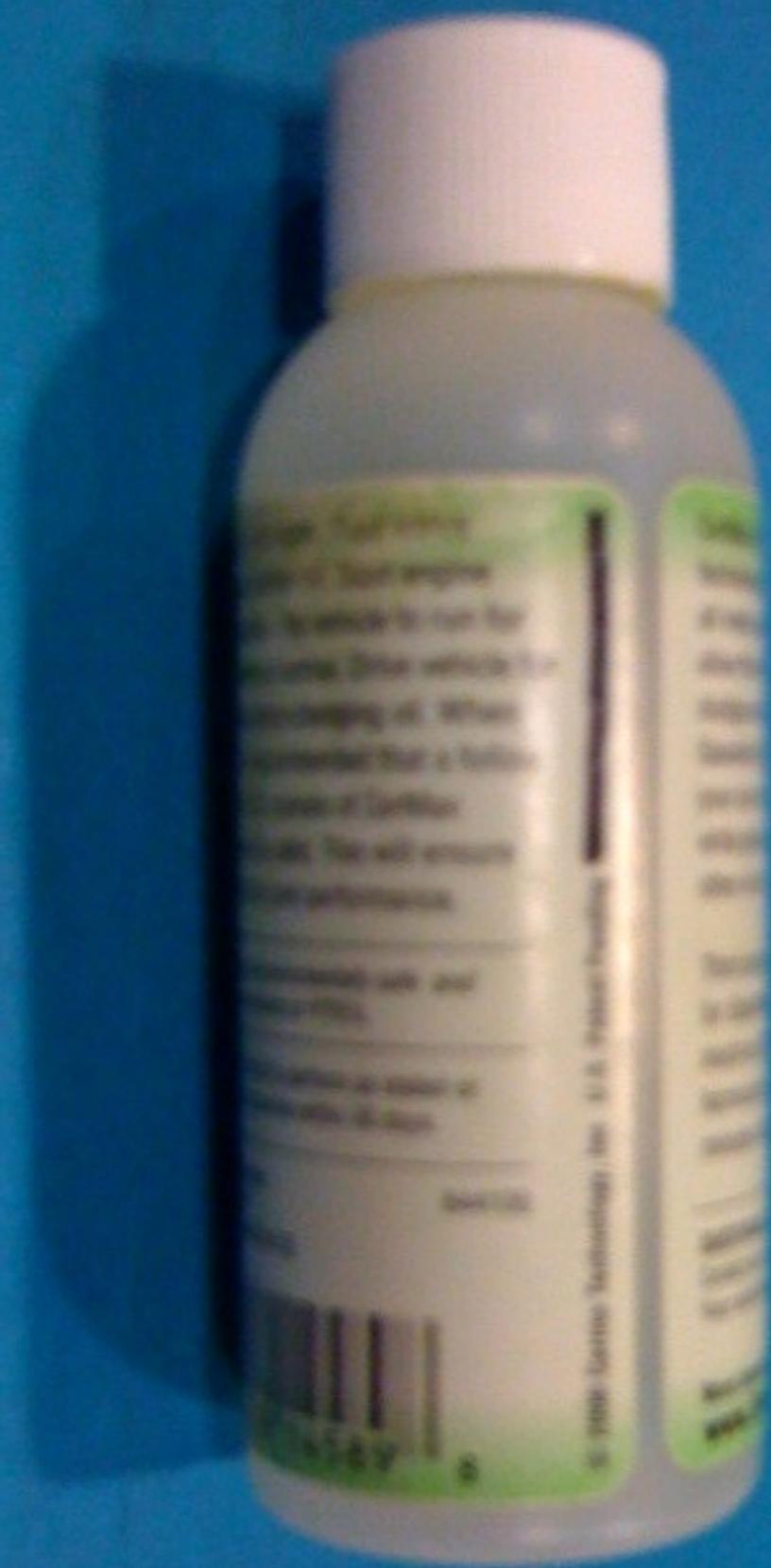


EXHIBIT 4